

delivery essential to complete a deed, which, as long<sup>1</sup> as it remains in the hands of the party, is as yet no deed, it is in *posse* only, but not in *t\**, \sv, and I withheld a delivery of commissions. They cannot issue a mandamus to the President or Legislature or any of their officers. When the British treaty of — arrived, without any provision against the impressment of our seamen, I determined not to ratify it. The Senate thought that I should ask their advice, I thought that would be a mockery of them, when I was predetermined against following it, should they advise its ratification. The Constitution had made their advice necessary to confirm a treaty but not to reject it. This has been blamed by some; but I have never doubted its soundness. In the cases of two persons *untt'mtti*, under exactly similar circumstances, the federal court had determined that one of them (Duane) was not a citizen; the House of Representatives nevertheless determined that the other {Smith of South Carolina) was a citizen and admitted him to a seat in their body. Duane was a republican and Smith a federalist, and their decisions were made during the federal ascendancy.

These are examples of my position that each of the three departments has equally the right to decide for itself what is its duty under the Constitution. (To Judge Roane, 1819. C VII, 133.)

JUDICIAL.—You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one that would place us under the despotism of an oligarchy. Our judges are as honest as other men are and no more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is *boni judicis c.v/ antplitin' /Mmt/iVfi'tWtvw*, and their power is more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party its members would become despots. It has more wisely made all the departments co-equal and co-sovereign with themselves. If the Legislature fails to pass laws for a